

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES,

No. C-10-3932 EMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

v.

AUTO CITY 76, *et al.*,

**(Docket No. 101)**

Defendants.

On November 5, 2014, this Court issued an order granting Defendants' motion for partial summary judgment.<sup>1</sup> *Yates v. Auto City 76*, C-10-3932 EMC, 2014 WL 5767506 (N.D. Cal. Nov. 5, 2014). The Court concluded that Plaintiff Craig Yates "cannot recover damages for any visits beyond the first visit to Auto City 76" because Yates failed to mitigate his damages as required under California law. *Id.* at \*5. Specifically, this Court determined that "Mr. Yates' proffered explanation for his numerous repeat visits to Auto City 76," namely to purchase cheap gas and obtain a good carwash, "is not a 'reasonable explanation' [for those return visits] as a matter of law." *Id.* at \*4 (quoting Section 25 of Stats. 2012, c. 383 (S.B. 1186)).

On November 17, 2014, Yates filed a motion for reconsideration. Docket No. 101 (Motion for Reconsideration). Although Yates raises four separate "issues" that this Court purportedly failed

<sup>1</sup> Defendants are Auto City 76, R.A.T. Oil, Inc., and Canadian American Oil Co.

1 to consider in reaching its earlier summary judgment ruling, only one needs to be addressed here:<sup>2</sup>  
 2 the Court did not separately analyze Yates' claim that, in addition to Auto City 76's excellent gas  
 3 prices and quality car wash, Yates was also motivated to repeatedly return to Auto City 76 to  
 4 "determine whether Auto City 76 did in fact remediate the architectural barriers [Yates had  
 5 previously] complained of." *Id.* at 2.

6 As an initial matter, this Court notes that Yates likely failed to preserve this argument in his  
 7 four-page opposition to Defendants' summary judgment motion; it was not clearly asserted, having  
 8 been mentioned only fleetingly. *See* Docket No. 89 at 3 (Opposition to Summary Judgment)  
 9 ("During later visits to the service station, Plaintiff testified that he was also motivated by his desire  
 10 to see whether progress was been [sic] made on the removal of barriers at the service station.  
 11 However, this purpose was never Plaintiff's sole reason for visiting the service station, and the  
 12 availability of reasonably priced, inexpensive gasoline was the recurring cause of Plaintiff's  
 13 repeated visits."). Moreover, Yates' attorney failed to appear at the summary judgment hearing  
 14 where he could have developed this argument for the Court.<sup>3</sup> Nevertheless, the Court hereby  
 15 **GRANTS** the motion for reconsideration. For the reasons explained below, the Court remains  
 16 convinced that Yates failed to reasonably mitigate his damages as a matter of law, and thus declines  
 17 to change its summary judgment ruling.

18 As this Court has already explained in its earlier ruling, "the key inquiry regarding mitigation  
 19 of damages is whether the plaintiff has a 'reasonable explanation for the repeated conduct.'" *Yates*,  
 20 2014 WL 5767506 at \*3 (quoting Section 25 of Stats. 2012, c. 383 (S.B. 1186)). In his motion for  
 21 reconsideration, Yates argues that his desire to determine whether Auto City 76 had removed  
 22 architectural barriers to access that he had previously identified to Defendants provides an additional

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23  
 24 <sup>2</sup> The Court does not address Yates' "Issue #1" because it is largely unintelligible, and to the  
 25 extent the Court understands the argument, it finds it is without merit. "Issue #3" is not separately  
 26 addressed because it is entirely duplicative of "Issue #2," which this Order addresses on the merits.  
 The Court does not separately address "Issues # 4 and #5" because the Court already considered and  
 rejected these arguments in granting partial summary judgment in its earlier Order.

27 <sup>3</sup> As noted in the Court's summary judgment order, this is not the first time Mr. Frankovich  
 28 failed to attend a hearing in this case. *See Yates*, 2014 WL 5767506 at \*1 n.1. Mr. Frankovich is  
 advised that the Court does not look favorably upon attorneys who skip hearings, and then later file  
 motions for reconsideration that raise arguments that could have been addressed at argument.

1 “reasonable explanation” for his more than 16 return visits to Auto City 76. Docket No. 101 at 2. It  
2 is not.

3 It was not necessary for Yates, a seriously disabled individual, to *personally* return to Auto  
4 City 76 (and thereby arguably subject himself to a number of known access barriers) in order to  
5 monitor Auto City 76’s remediation efforts. Yates had any number of more reasonable ways to  
6 determine Auto City 76’s “compliance.” He could have sent Auto City 76 a letter requesting a  
7 status report and photographs of the remediation work. He could have sent his attorney, Mr.  
8 Frankovich, to determine if barriers were being removed. Or, Yates could have sent an  
9 “accessibility consultant” to Auto City 76 to determine whether repairs had been made.

10 Indeed, this last suggestion actually occurred to Yates, as the record contains a March 2012  
11 letter and report from a firm called “Access Investigation Monitoring” that begins “[p]er your  
12 request a *follow-up on site inspection was conducted* by Access Investigation Monitoring on March  
13 15, 2012 to determine what, if any remedial repairs still need to be complete[d]” at Auto City 76.  
14 See Docket No. 63 at 14-25 (letter and report from “Access Investigation Monitoring” to Mr.  
15 Frankovich) (emphasis added). The March 2012 letter goes on to allude to at least two previous  
16 inspections conducted by Yates’ accessibility consultants regarding alleged accessibility barriers at  
17 Auto City 76. *Id.* at 14.

18 Yates now claims that he personally needed to monitor Auto City 76’s remediation work, but  
19 this assertion is completely belied by the evidence that Yates was already sending professional  
20 consultants to do such monitoring. In any event, and even if he wanted to visit this site to monitor it,  
21 that would be a purpose unrelated to a desire to visit in order to actually use the facilities. It is  
22 questionable whether Yates would be entitled to damages for visits designed solely to monitor Auto  
23 City 76’s remediation efforts. Statutory damages are available under California’s Unruh Civil  
24 Rights Act where a disabled person is denied “full and equal accommodations, advantages, facilities,  
25 privileges, or services in [a] business establishment[.]” See Cal Civ. Code § 51(b). If Yates had no  
26 intent to actually use a facility or enjoy an accommodation, and instead merely wanted to inspect such  
27 a facility for possible law violations, it is unclear whether he was denied “full and equal  
28 accommodations” or “services.” In any event, in light of all the alternative ways Yates could have


1 monitored compliance without the need to go back to Auto City 76 on 16 occasions, the Court will  
2 not allow Yates to recover statutory damages for these visits. Yates' "monitoring" claim is not a  
3 "reasonable explanation" for his conduct. Yates did not fulfill his duty to mitigate his damages once  
4 he learned of architectural barriers to access at Auto City 76. *See Yates*, 2014 WL 5767506 at \*2  
5 (discussing the obligation under California Civil Code Section 55.56 to mitigate damages).

6 The Court grants Yates' motion for reconsideration. On reconsideration, the Court  
7 concludes that partial summary judgment was properly granted in favor of Defendants.

8 This order disposes of Docket No. 101.

9  
10 IT IS SO ORDERED.

11  
12 Dated: November 25, 2014

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EDWARD M. CHEN  
United States District Judge